

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CARLA A. CARSON)	
Claimant)	
VS.)	
)	
VIA CHRISTI - OUR LADY OF LOURDES CAMPUS)	Docket No. 216,388
Respondent)	
Self-Insured)	

ORDER

Respondent appealed the July 10, 1998, Award entered by Administrative Law Judge Jon L. Frobish.

APPEARANCES

Claimant appeared by her attorney, Mark T. Schoenhofer of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Eric K. Kuhn of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge found claimant was entitled to a 5 percent permanent partial general disability as a result of a July 11, 1996, work-related low-back injury. Respondent acknowledges that claimant injured her low back at work on July 11, 1996. However, the respondent contends the record proves claimant's low-back injury has resolved. Thus, the respondent contends claimant is not entitled to permanent partial disability benefits because her July 11, 1996, accident did not result in a permanent injury. Furthermore, respondent contends, if claimant suffered a permanent low-back injury, such injury occurred not at work but away from work when she lifted one of her children on or about August 29, 1996.

Claimant claims the record establishes not only did she sustain a work-related permanent injury on July 11, 1996, but also she sustained a reinjury at work on August 29, 1996.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties contained in their briefs, the Appeals Board finds as follows:

The Administrative Law Judge concluded that claimant proved she suffered a low-back injury while at work on July 11, 1996, but failed to prove she reinjured her low back and her neck performing her regular work activities on August 29, 1996.

The Appeals Board finds claimant's testimony and the medical records admitted into evidence in this case establish that claimant's July 11, 1996, low-back injury has not resolved and is a permanent injury. The Appeals Board acknowledges respondent's human resources manager, DeeAnne Dubiel, testified that claimant told her she had injured her neck and low back on August 29, 1996, when she picked up one of her children while looking for a house with her husband. However, claimant contradicted Ms. Dubiel's testimony by testifying she did not tell Ms. Dubiel she injured her neck and low back while picking up one of her children. The Administrative Law Judge found claimant did not suffer an intervening nonwork-related injury. Both the claimant and Ms. Dubiel testified in person before the Administrative Law Judge. Therefore, in making this finding, the Administrative Law Judge had to find the claimant more credible than Ms. Dubiel. The Appeals Board finds some deference should be given to the Administrative Law Judge's finding because he was able to assess the witnesses' credibility during their in-person testimony. The Appeals Board affirms the Administrative Law Judge's finding that claimant did not suffer an intervening nonwork-related injury. Also, claimant testified, at the regular hearing which was held on December 30, 1997, that her low back had not resolved as it remained symptomatic and she is unable to do certain activities because of the injury.

During the litigation of this case, the Administrative Law Judge appointed physiatrist Philip R. Mills, M.D., to perform an independent medical examination of the claimant. Dr. Mills saw the claimant on one occasion, July 28, 1997. He diagnosed claimant with lumbosacral sprain and cervical myofascial pain syndrome. Based on the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, Dr. Mills opined that claimant had a 5 percent permanent partial impairment to the body as a whole relating only to her lumbosacral sprain. Dr. Mills restricted claimant to lift with good body mechanics, avoid twisting and bending, and recommended she not work at a job that required her to transfer patients.

The Administrative Law Judge found Dr. Mills' opinion of permanent functional impairment as the most credible and persuasive medical opinion in the record. The Appeals Board agrees with the Administrative Law Judge that the independent medical opinion of Dr.

Mills should be adopted over the opinions of respondent's testifying physicians, Dr. David W. Hellman and Dr. Bernard T. Poole.

The Appeals Board concludes the Administrative Law Judge's Award should be affirmed. The Appeals Board also finds the Administrative Law Judge's Award sets forth findings of fact and conclusions of law that are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this order. Therefore, those findings and conclusions are adopted by the Appeals Board as if specifically set forth herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the July 10, 1998, Award entered by Administrative Law Judge Jon L. Frobish should be, and is hereby, affirmed.

All authorized medical expenses are ordered paid by the respondent.

The Appeals Board adopts all remaining orders contained in the Administrative Law Judge's Award.

IT IS SO ORDERED.

Dated this ____ day of October 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Mark T. Schoenhofer, Wichita, KS
Eric K. Kuhn, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director